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## Federal Communications Commission

DA 01-380

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 Before the  
 Federal Communications Commission  
 Washington, D.C. 20554

In the Matter of

Amendment of Section 73.622(b),  
 Table of Allotments,  
 Digital Television Broadcast Stations.  
 (Lexington, Kentucky)

MM Docket No. 00-118  
 RM-9757

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: February 15, 2001

Released: February 16, 2001

By the Chief, Video Services Division:

1. At the request of WKYT Licensee Corporation ("WKYT"), licensee of station WKYT-TV, NTSC channel 27, Lexington, Kentucky, the Commission has before it the Notice of Proposed Rule Making, 15 FCC Rcd 11367 (2000), proposing the substitution of DTV channel 13 for station WKYT-TV's assigned DTV channel 59. WKYT<sup>1</sup>, Gateway Communications, Inc. ("Gateway"), ACME Communications, Inc. and ACME Television License of Kentucky, LLC (hereafter collectively "ACME")<sup>2</sup> filed comments. WKYT filed responsive comments.

2. Gateway, licensee of station WOWK-TV, NTSC channel 13, Huntington, West Virginia, requests the Commission to defer action on WKYT's proposal pending the outcome of MM Docket No. 00-39<sup>3</sup> or limit station WKYT-TV's power to 1 kW. Gateway states that WKYT can elect to operate its assigned DTV channel 59 facility once the post-transition occurs on its currently assigned NTSC channel 27. Gateway states that in the *Notice*, the Commission requested comments on certain issues including whether to adopt a requirement that DTV stations

<sup>1</sup> As stated in the *Notice*, petitioner's request, although signed, failed to include an affidavit verifying the statements contained in his petition, as required by Section 1.52 of the Commission Rules. Petitioner's was requested to correct this deficiency in his responsive comments and has complied accordingly by filing an affidavit. Petitioner is also now represented by counsel.

<sup>2</sup> ACME filed supporting comments noting that on July 17, 2000, ACME; Pappas Telecasting of America, and Television Capital Corporation of Lexington filed a "Supplement to Joint Request for Approval of Universal Settlement" ("Settlement") looking toward a universal settlement of the proceeding involving three mutually exclusive applications for a construction permit for a new TV station on NTSC channel 62 at Lexington, Kentucky. In connection with the Supplement the parties concurrently tendered a petition for rule making proposing to amend the NTSC Table of Allotments to substitute channel 59 for channel 62 at Lexington, Kentucky. ACME states that the petition relied upon and supported the instant proposal to amend the DTV Table of Allotments to substitute DTV channel 13 for DTV channel 59 at Lexington.

<sup>3</sup> See *Notice of Proposed Rule Making*, 15 FCC Rcd 5257 (2000) (*Notice*), (*Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*).

elect their post-transition DTV channel by a certain date. Gateway contends that Lexington, Kentucky, is in an area of spectrum congestion and Gateway requests that WKYT's request be deferred until the Commission resolve the issue of post-transition DTV channel. Gateway further requests that if the Commission elects not to defer action on WKYT's request that it restrict station WKYT-TV power to replicate its current NTSC service area, thus reducing the potential impact to post-transition facilities.

3. In reply comments, WKYT states that Gateway cannot and does not oppose the requested channel change for station WKYT-TV. WKYT argues that its proposed substitution complies with every aspect of the Commission's rules and has absolutely no impact upon WOWK-TV, Huntington, West Virginia. WKYT further contends that its channel change would have no impact upon WOWK-TV even were it sometime in the future to elect to change its digital allocation to channel 13.<sup>4</sup> Furthermore, it notes there is no reason to reduce its power below the proposed 5 kW. WKYT argues that such a limitation would result in an ERP below the minimum value set by the Commission for DTV allotments. Specifically, it states that in the Commission's *Sixth Report and Order*, 12 FCC Rcd 14588 (1997), a minimum ERP of 3.2 kW was established for upper VHF channels (7-13). Minimum ERP levels were established to "ensure that stations have a sufficient service area to compete effectively in the provision of DTV services and is consistent with the maximization concept supported by the industry." (par. 30) Thus, WKYT asserts that the limitation of the WKYT-DR ERP to less than 1 kW does not comport with the Commission's stated goals and policy. WKYT states it is prepared to proceed to construct and operate WKYT-DT on channel 13 within the time requirements of the Commission. WKYT notes that its present allotment of DTV channel 59 is a non-core digital allotment and were WKYT-DT to commence operation on channel 59 it would be required to change its digital allocation to a core frequency at the conclusion of the digital transition period. That, concludes WKYT, is a totally unnecessary expense to impose upon its station. Furthermore, WKYT states, as reflected in ACME's comment, adoption of WKYT's channel change permits the advent of a new television station in Lexington.

4. Based on the record before us, we will not defer action as Gateway requests. Gateway implies that adoption of WKYT's channel substitution will cause impact to post-transition facilities but, has failed to provide any documentation to support that allegation. There is no legal or technical justification to delay action on WKYT's request to substitute channels. To do so would only circumvent the Commission's goal to expedite requests to modify initial DTV allotments that involve eligible television broadcasters. Therefore, we believe the public interest would be served by substituting DTV channel 5 for DTV channel 59 since it will enable station

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<sup>4</sup> WKYT submitted detailed engineering studies denoting the interference levels from WKYT-DT and WOWK-DT. Those studies indicate that the proposed WKYT-DT operation on channel 13 is well within the Commission *de minimis* interference limits with respect to a maximized facility for WOWK-DT on channel 13. Furthermore, WKYT's submission also demonstrates that should WKYT-DT be authorized on channel 13, later maximization of WOWK-DT on channel 13 may have to consider the WKYT-DT facility. Assuming a maximize ERP of 13.5 kW for WOWK-DT, the WKYT's interference study showed that interference to the proposed WKYT-DT facility would decrease by 1073 persons (0.16%) from that which would be experienced from the licensed WOWK-TV NTSC channel 13 facility.

WKYT-TV to operate on a core allotment and construct only one set of digital transmission facilities.

5. DTV channel 13 can be allotted to Lexington, Kentucky, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (38-02-23 N. and 84-24-10 W.). In addition, we find that this channel is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2) for Station WKYT-TV with the following specifications:

<u>State &amp; City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
KY Lexington	13	5	300	758

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 2, 2000, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Lexington, Kentucky	13, 22, 40, *42

7. IT IS FURTHER ORDERED, That within 45 days of the effective date of this Order, WKYT Licensee Corporation shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 13 in lieu of DTV Channel 59 for station.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Services Division  
Mass Media Bureau